

## **REMARKS**

Please reconsider the claims in the application in view of the remarks below. In the present application, claims 1-25 remain pending. Claims 1, 13, 15, 16, 17, 23 are independent.

### **Claim Rejections – 35 U.S.C. §101**

The Office Action rejected claims 1-13, 16, 18 and 19 under 35 U.S.C. §101. In this reply, without conceding to the propriety of the rejection and in order to further advance the prosecution of the application, claims 1, 13, 16 and 17 are being amended as suggested in the Office Action. Accordingly, applicant respectfully requests that the section 101 rejection be withdrawn.

### **Claim Rejections – 35 U.S.C. §112, first paragraph**

Claims 2, 14, 18-22, 24 and 25 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Particularly, claims 14 and 18 are allegedly unclear as to whether those claims are record medium claims or program claims. Claims 12 and 22 are allegedly unclear as to whether those claims are apparatus claims or computer program product claims. Claims 20 and 24 are allegedly unclear as to whether those claims are article of manufacture or method claims. Claim 20 is allegedly unclear as to whether that claim is storage device claim or a method claim. Claims 21 and 25 are allegedly unclear as to whether those claims are storage device claims or a method claims. Claim 22 is allegedly unclear as to whether that claim is a computer program product or an apparatus claim.

In this reply, claims 14 is being amended to recite “A” rather than “The” in the beginning of the preamble introducing the claim. Claim 14 now recites “A record medium.” Similarly, claim 18 recites, “A record medium.” Claim 12 recites, “The compiler apparatus according to

claim 10”; claim 22 recites, “A computer program product”; claims 20 and recite, “An article of manufacture”; claim 21 and 25 recite, “A program storage device”; and claim 22 recites, “A computer program product.” Applicant believes that those preambles recite clearly the type of claims being claimed. Accordingly, applicant respectfully requests that the section 112 rejection be withdrawn.

Claim Rejection under 35 U.S.C. §102(b)

Claims 1-4 and 13-25 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,655,122 (“Wu”). Without conceding to the propriety of the rejections, independent claims 1, 13, 16 and 17 are being amended to further recite, “the in-loop process frequency collection portion further determining whether said loop process frequencies are higher than a predetermined reference frequency, and said in-loop process frequency collection portion determines number of times of execution of said each of a plurality of in-loop processes if said loop process frequencies are higher than a predetermined reference frequency.” Independent claims 15 and 23, which are method claims, are being amended similarly. Support for the amendment can be found on page 11, lines 12-24 of the specification as originally submitted. It is believed that Wu does not disclose or suggest every element claimed in independent claims as amended. For instance, while the cited section of Wu (e.g., Col. 11, lines 52-67) appears to describe finding the cyclic probability of the inner loop and then treating the outer loop in the same manner as a single-level loop, Wu fails to disclose or suggest that an in-loop process frequency is determined based on determining whether outer loop process frequencies are higher than a predetermined reference frequency. For at least this reason, it is

believed that Wu does not anticipate independent claims 1, 13, 16, 17, 23 and, 15 and 23, and their respective dependent claims by virtue of their dependency.

Claim Rejection under 35 U.S.C. §103(a)

The Office Action rejected claims 5-12 under 35 U.S.C. §103(a) as allegedly being unpatentable over Wu in view of U.S. Patent No. 6,088,525 ("Peri"). Claims 5-12 are dependent. Therefore, the same reasoning provided above for the independent claims also apply to claims 5-12. In addition, because Peri fails to disclose or suggest what Wu lacks, it is believed that claims 5-12 are unobvious over Wu and Peri.

In view of the foregoing, this application is now believed to be in condition for allowance, and a Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference might expedite prosecution of this case, applicant respectfully requests that the Examiner call applicant's attorney at (516) 742-4343.

Respectfully submitted,



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